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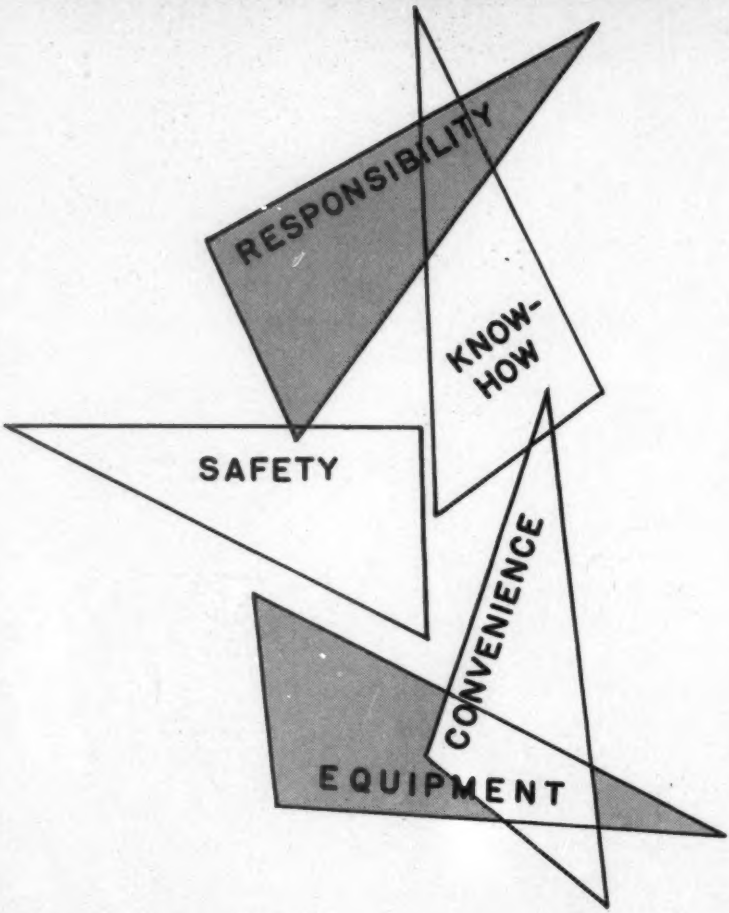

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APRIL—MAY 1960

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Recent Decisions

Freedom *for lawyers* from the many burdensome details connected with qualification of a foreign corporation in any state or Canadian province:

FREEDOM from hours-long research

At the lawyer's request C T will furnish him, free, with complete, carefully-complied summaries of the state's statutory requirements governing qualification. These summaries, C T's "Foreign Corporation Law Features," also give the lawyer, at a glance, the information he will want about entrance fees, annual taxes and penalties for failure to qualify.

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state tax trends

Out-of-State Tax Collection

TODAY, twenty-seven states[1] have in effect legislation designed to facilitate the collection of taxes by other states. They have done this by opening their courts to the tax collecting officials of other states to suits against tax-debtors.

A condition usually imposed, however, is that any state seeking to take advantage of such legislation must first have extended a like courtesy by, in effect, enacting reciprocal legislation, an exception being Missouri, where collection has been permitted under the rules of comity. (*State ex rel. Oklahoma Tax Commission v. Rodgers*, 238 Mo. App. 1115, 193 S. W. 2d 919.)

Georgia's provision, which is perhaps the most succinct of all, was enacted as Section 47 of Act 296, Laws 1937-1938, and reads:

> "*Interstate Comity*—The courts of this State shall recognize and enforce liabilities for taxation lawfully imposed by other states which extend like comity."

In the absence of such reciprocal legislation permitting state tax collecting officials to sue in their official capacity directly for taxes due, the trend of the decisions has been to indicate that, before suit can be brought in the courts of another state, the taxing state must first reduce its tax claim to judgment in its own courts, and then institute suit on that judgment in the courts of a state in which the tax debtor can be found. This is apparently still the situation with respect to those states which have not enacted such reciprocal legislation. (*Milwaukee County v. M. E. White Co.*, 296 U. S. 268; *People of the State of New York v. Coe Mfg. Co.*, 112 N. J. L. 536, 172 A. 198, certiorari denied, 293 U. S. 576.)

At least three states which have adopted the reciprocal legislation have specifically included penalties and interest charges in their definition of the term "taxes" and one of these, Alabama, has included "contributions under an Unemployment Compensation Law or other contributions in the nature of a tax" and "licenses and fees."

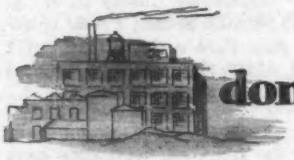
In Maine, Minnesota, Oregon and Wisconsin, the Attorneys General are specifically empowered to institute suits in the courts of other states to collect taxes due.

Decisions in which there was denial of recovery in suits, not based on judgments, brought by other states are: *State of Colorado v. Harbeck et al.*, 232 N. Y. 71, 133 N. E. 357; *State of Minnesota v. Karp*, 84 N. E. 76; *City of Detroit et al. v. Proctor*, 61 A. 2d 412; *Hamilton County Treasurer v. Hartzell*, 61 Montgomery County (Pa.) Law Reporter 329, 55 District and County Reports 100; *Moore, Treasurer of Grant County, Indiana v. Mitchell et al.*, 281 U. S. 18; *People of the State of California ex rel. McColgan v. Bruce*, 129 F. 2d 421; *Craig, State Collector of Mississippi v. Southern Natural Gas Co.*, 125 F. 2d 66.

[1] Alabama, Alaska, Arkansas, California, Georgia, Hawaii, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, New Hampshire, North Carolina, Ohio, Oklahoma, Oregon, South Dakota, Tennessee, Virginia, Washington, West Virginia and Wisconsin.

Instances where states were unsuccessful in connection with tax claims filed in another state with court appointed receivers are: *Elsner v. United American Utilities, Inc.*, (Del.) 21 Del. Ch. 73, 180 A. 589, affirmed by unreported decision of Delaware Supreme Court; *Silverman v. National Assets Corporation*, (Del.) 12 A. 2d 389; *J. A. Holshouser Co. et al. v. Gold Hill Copper Co.*, 138 N. C. 248, 50 S. E. 650; *In re Martin's Estate*, 240 N. Y. S. 393.

The State of Delaware was successful in establishing claims for its franchise taxes in receivership proceedings in other states in *Standard Embossing Plate Mfg. Co. v. American Salpa Corporation*, (N. J.) 167 A. 755 and *State of Delaware v. Gray Receiver*, (Wis.) 267 N. W. 310.



domestic corporations

DELAWARE

Judgment given for defendant directors of corporation who purchased with corporate funds a large block of its shares from competitor who had acquired the shares with a view to controlling the defendants' corporation.

The complaint charged the directors of defendant Delaware corporation with the allegedly improper act of using corporate funds for the purchase of 60,200 shares of defendant corporation held by a customer. The reasons for the purchase were numerous, but were summarized by the court as follows: "The continuance of" the customer "as a dominant force in" defendant corporation "posed a serious threat to the welfare of the latter corporation and its stockholders." The plaintiff alleged that the only purpose of the directors in making the purchase was to retain control.

The Court of Chancery for New Castle County found that plaintiff had failed "to establish a case of fraud, misconduct or abuse of discretion such as would compel a court of equity to find the individual defendants guilty of a breach of their fiduciary duty and cause the purchase in question to be declared to have been made for no proper corporate purpose. As to the plaintiff's contentions that the directors were selfishly voting for the retention of their offices and emoluments, the Court concluded that the plaintiff had not succeeded in overcoming the presumption that the directors formed their judgment in good faith.

The Court pointed out, in addition, that even assuming that the purpose of all the directors was primarily a selfish desire to retain control and jobs through the device of depriving the customer of the power to buy out the corporation, the plaintiff was not injured. The market value of the treasury shares involved had substantially increased, and there was no evidence of mismanagement, on the part of the incumbent board, since the shares were acquired and the possibility of a customer-dominated board eliminated. Judgment was entered for the directors.

Kors v. Carey et al., Court of Chancery for New Castle County, February 18, 1960. William E. Taylor, Jr., of Wilmington, and Louis Kipnis, of New York, for plaintiff. Robert H. Richards, Jr., of Richards, Layton and Finger, of Wilmington, and Patterson, Belknap & Web, of New York, for defendant, Lehn & Fink Products Corporation, and the individual defendants. Berl, Potter and Anderson, of Wilmington, and William M. Kaplan, of New York, for defendant, United Whelan Corporation.

Deferred compensation unit plan adopted by Delaware corporation to attract and retain employees held not invalid because it provided for crediting employee with increased value of common stock.

This is an appeal from a judgment of the Court of Chancery, New Castle County, (The Corporation Journal, June —July 1959, page 225-5, 149 A. 2d 756) in which that Court held not invalid a so-called deferred compensation unit plan adopted by the corporate defendant to attract and retain in its employ persons of outstanding competence. The stockholder's principal argument against the validity of the plan was directed at the feature of the plan which credited to the "unit" account of the employee, the so-called excess market appreciation measured by the difference between the market value of the corporation's stock at the time of termination of employment and at the time the employee entered the plan. The stockholder argued that there was no reasonable relation between the increase in value of the corporation's stock and the value to the corporation of the employee's services.

The Delaware Supreme Court, affirming the Chancery Court, stated that "fundamentally the Deferred Compensation Unit Plan is no more liable to attack upon the ground of no existing reasonable relation between the amount of compensation and the value of services than is the ordinary stock option plan." "If one is a valid exercise of corporate power, by the same token the other is equally valid." Judgment affirmed.

Lieberman v. Becker et al., 155 A. 2d 596. Irving Morris, of Cohen & Morris, of Wilmington, for appellant. Milton Paulson, of New York City, of counsel. James M. Tunnell, Jr., George T. Coulson and Andrew B. Kirkpatrick, Jr., of Morris, Nichols, Arsht & Tunnell, of Wilmington, for appellees.

Unregistered stockholders held not entitled to appraisal rights after merger.

The question presented was whether after a merger an unregistered stockholder of a constituent corporation is entitled to appraisal rights under Delaware law. The stockholders involved were equitable owners of shares registered in other names. The Supreme Court of Delaware held that "an unregistered stockholder is not entitled to inject himself into intracorporate matters, in respect of which the corporation is entitled to rely on its stock register in dealing with its stockholders." The objections to the stockholders' claims to appraisal were sustained.

Coyne et al. v. Schenley Industries, Inc., 155 A. 2d 238. H. James Conaway, Jr., of Morford, Young & Conaway, of Wilmington, for appellants. Aaron Finger, of Richards, Layton & Finger, of Wilmington, for appellee.

Stock option plan adopted by disinterested Board of Directors using independent business judgment held valid.

Defendant corporation granted stock options to employees which provided, fundamentally, that an optionee could exercise the options, granted in 1950 and 1951, up to and including June 1, 1955 if, at the time of exercise, the optionee was then performing services for the corporation, or if he was a member of the Armed Services, or was employed in a period of national emergency by the United States Government. The Board of Directors of sixteen members which approved the plan was completely disinterested with the exception of two members who ultimately received grants of options under the plan.

The Delaware Supreme Court, holding the plan valid, pointed out that it was adopted by an independent and disinterested Board of Directors and subsequently received stockholder ratification. In addition, the Court observed that the options granted pursuant to the plan could be exercised by the optionee only while in the employ of the corporation, subject to two unimportant exceptions, that the salaries of the corporation's employees were below average, that the plan was made known to the employees before its adoption and acted as an inducement to them to remain in the corporation's service, and that the Directors exercised independent business judgment in adopting the plan. For the foregoing reasons the case was remanded with instructions to enter judgment for the defendants.

Beard et al. v. Elster et al., Supreme Court of Delaware, February 11, 1960. E. N. Carpenter, II, and William E. Wiggin, of Richards, Layton & Finger, of Wilmington, attorneys for appellants. Richard F. Corroon, of Berl, Potter & Anderson, of Wilmington, attorneys for American Airlines, Inc. William E. Taylor, Jr., of Wilmington, attorney for appellees. Abraham L. Pomerantz and William E. Haudek, of Pomerantz, Levy & Haudek, of New York City, of counsel.

foreign corporations

CALIFORNIA

Unlicensed foreign corporation held subject to service of process in the State where it had a continuing arrangement for the sale of its products in the State, and where the cause of action arose in the State.

This was an action for personal injuries sustained by plaintiff when the cylinder of a revolver manufactured by defendant Massachusetts corporation exploded. Service was attempted to be made on defendant by serving its alleged agent, sales manager and manufacturer's representative in California. Defendant's offices and manufacturing facilities were in Springfield, Massachusetts; it was not

qualified in California; it had no agents, salesmen or other employees residing in California; it had no offices, property or assets in California; it distributed its products f.o.b. Springfield through regular dealer channels; and the alleged agent, sales manager and manufacturer's agent was, in fact, a nonexclusive manufacturer's representative and not an agent or sales manager. From an order of the Superior Court quashing the service, affirmed by the District Court of Appeal, Fourth District (The Corporation Journal, December 1959 — January 1960, page 288), the plaintiff appealed.

The California Supreme Court noted that defendant had a continuing arrangement for the distribution and sale of its products throughout California. Defendant had retained a manufacturer's representative for the promotion of sales, for the servicing of dealer accounts, and for the distribution of advertising material which defendant furnished in furtherance of its selling activity. In addition, the gun which exploded was sold in California, the accident occurred in California, the plaintiff was a resident of California, and many of the witnesses were in California. In view of these facts, the Supreme Court deemed it "not inconsistent with 'traditional notions of fair play and substantial justice' to subject the defendant" to the courts of California. The order granting the motion to quash service of summons and complaint was reversed.

Cosper v. Smith & Wesson Arms Co., 346 P. 2d 409. Morris B. Chain and Milton M. Younger, of Bakersfield, for appellant. Borton, Petrini, Conron & Brown and P. R. Borton, of Bakersfield, for respondent.

ILLINOIS

Newspaper corporations, not licensed to do business in Illinois, and having subscribers but no agents in the State, ruled not subject to jurisdiction.

Defendant newspaper corporations were incorporated in, and had their principal places of business in, states other than Illinois. Their newspapers were published outside Illinois, and no defendant was licensed to do business, had a registered agent, or maintained an office in Illinois. The defendants were not listed in any Illinois telephone or business directory, and employed no agent permanently located in the State, nor maintained any assets or bank accounts in Illinois. Each defendant sent its papers into the State each day, some directly to subscribers and others to wholesale distributors, and newsstands. All payments were mailed to defendants' offices outside Illinois.

The United States Court of Appeals, Seventh Circuit, concluded that the necessary contacts with the state, so as to subject defendants to the jurisdiction of the Illinois courts, were absent, and defendants were not amenable to suit in the state. The judgment of the District Court dismissing the case was affirmed.

Insull v. New York World-Telegram Corporation et al., 273 F. 2d 166. Floyd E. Thompson, Kenneth J. Burns, Jr., Keith F. Bode (Thompson, Raymond, Mayer, Jenner & Bloomstein, of counsel), for appellant. Howard Ellis, Don H. Reuben, James E. Beaver, Keith Masters (Kirkland, Ellis, Hodson, Chaffetz & Masters, of counsel), for appellee.

MISSOURI

Contracts made in Missouri by unlicensed foreign corporation held void.

The question before the court here was whether or not a holder in due course of a negotiable instrument, purchased from a foreign corporation not authorized to do business in the State of Missouri, could recover on the instrument. The evidence was undisputed that the maker was doing business in Missouri at the time of the transaction out of which the instrument grew.

The Kansas City Court of Appeals took the view that Section 351.635 of the Missouri Statutes, which prohibits foreign corporations from doing business in the state without first having complied with the law, renders contracts entered into by such foreign corporations void. Therefore, the court concluded, even a holder in due course cannot enforce such contracts. The judgment of the trial court directing a verdict for defendant was affirmed.

Salitan v. Carter, Ealey and Dinwiddie, 325 S. W. 2d 59. Harry T. Limerick, Jr., of Columbia, for appellants. Edwin C. Orr, Orr & Sapp, of Columbia, for respondent.

MONTANA

Foreign corporation held not doing business so as to be subject to service of process where its activities in the state were incidental to solicitation and sales and were not continuous and systematic.

Plaintiff Montana corporation brought this action against defendant Pennsylvania corporation by service upon the Montana Secretary of State under a Montana statute permitting such service on an unlicensed foreign corporation "that was actually doing business within" the state at the time the action arose. Defendant moved to quash the service on the ground that it was not doing business in the state. Defendant drew up and submitted to plaintiff "preliminary drawings" on remodeling plaintiff's feed mill, and forwarded to plaintiff the bid of the construction company which was eventually employed by plaintiff to do the job in accordance with defendant's preliminary plans. The construction company purchased machinery and equipment from defendant to use in plaintiff's plant, and defendant's sales representative subsequently adjusted the new machinery and made gratuitous recommendations to plaintiff concerning its operation. There was no contract between plaintiff and defendant, and any consideration accruing to defendant from the transaction came from the sale of the machinery, and possibly indirectly from plaintiff's contracting with that firm to do the construction work.

The United States District Court, D. Montana, observed that the activities of defendant's sales representative were incidental to their solicitation and sales. In addition, the court found no evidence that the defendant was engaged in continuous and systematic activities in the state, as would be "necessary to meet the statutory requirement of 'actually doing business within this state' as construed by the Montana Supreme Court and cases generally." Neither, in the court's

opinion, did the defendant have the minimum contacts with the state such that the maintenance of the suit would not offend traditional notions of fair play and substantial justice. Defendant's motion to quash the service was granted.

Graham and Ross Mercantile Co. v. Sprout, Waldron & Co., 174 F. Supp. 551. Swanberg, Swanberg & Koby, of Great Falls, for plaintiff. Hall, Alexander & Kuenning, of Great Falls, for defendant.

NEW JERSEY

New York corporation, engaged in an isolated transaction, which was its first piece of business in New Jersey, ruled not required to be qualified in order to maintain suit.

Plaintiff New York corporation was not authorized to do business in New Jersey at the time it entered into the contract on which its cause of action was based. This was a contract of guarantee of subletting of New Jersey property.

The Superior Court of New Jersey, Appellate Division, noted that the lease and guarantee constituted the first piece of business transacted by the plaintiff in New Jersey and observed that it was an isolated transaction. In reaching the conclusion that the plaintiff was not barred from maintaining suit, the court gave full consideration to New Jersey's retaliatory statute, R. S. 14.15-5, and to both New Jersey and New York statutes barring unlicensed foreign corporations from use of the state courts in reference to the enforcement of contracts entered into at a time when business is done within each state.

Reynolds Offset Co. v. Summer et al., 156 A. 2d 737. Benjamin H. Chodash, of Jersey City (Krieger & Chodash, attorneys, Leon S. Wolk, of Jersey City, on the brief) for Reynolds Offset Co., Inc., appellant, respondent on cross-appeal and cross-appellant. Charles E. Villanueva, of Newark (Van Riper & Belmont, of Newark, attorneys) for Alexander and Edith Summer, a partnership, appellant, respondent and cross-appellant. John J. Gibbons, of Newark, (Crummy, Gibbons & O'Neill, of Newark, attorneys) for James E. Hanson, cross-appellant and respondent. Horace F. Banta, of Hackensack (Winne & Banta, attorneys, Bruce F. Banta, of Hackensack, on the brief) for Robert E. Blackford, cross-appellant and respondent.

State Supreme Court affirms Superior Court ruling in the *Lilly* case.

In *Eli Lilly and Company v. Sav-on Drugs, Inc.*, 57 N. J. Super. 291, 154 A. 2d 650, (The Corporation Journal, February—March, 1960, page 308), it was held by the Superior Court of New Jersey, Chancery Division, that an unlicensed foreign corporation was doing business in New Jersey so as to be barred from enforcing a Fair Trade contract in New Jersey, where it had a district manager and eighteen "detailmen" in the state.

Upon appeal the Supreme Court of New Jersey has adopted the decision of the Superior Court, in a *per curiam* opinion reading: "The judgment is affirmed for the reasons expressed in the opinion of Judge Scherer in the Court below."

The Secretary of State's office in one of the nation's larger states estimates one of every four notices mailed to corporations are returned to the Post Office, undeliverable because of incorrect addresses. The presumption: Many a corporation "forgets" to notify the state of a change in address of its principal office or address for receipt of service of process. Stated another way, one of every four corporations in the state has left itself wide open for a possible default judgment.

To avoid such problems for their clients thousands of lawyers select the agents and offices provided as part of the

C T System of Corporate Protection. They *know* C T will be there to receive service of process and other official communications. They *know* immediate notification and transmittal of the process will be made. They *know* it will be made in exact accordance with the lawyers instructions.

Are the addresses of agents and offices of your clients all up to date—in the state of incorporation and any states in which they are qualified as foreign corporations? If there's any doubt, check them now. And give a thought to *sure, systematic* C T service for all your clients.

Eli Lilly and Company v. Sav-on Drugs, Inc., Supreme Court of New Jersey, March 7, 1960. Melvin P. Antell; Lorentz & Stamler, attorneys; for the appellant. Warren E. Dunn, Lum, Fairlie & Foster, attorneys; Claus Motulsky of the New York Bar, on the brief; for the defendant-appellant. Murray Brochin; David D. Furman, attorney; for the State of New Jersey, intervenor. (*It is possible that there may be an appeal in this case to the Supreme Court of the United States.*)

Because of the importance of this ruling in the "doing business" field, we reprint below the digest of Judge Scherer's opinion as it appeared in the February—March issue of The Corporation Journal:

"Plaintiff unlicensed Indiana corporation sought to compel defendant to comply with minimum prices fixed for the resale of plaintiff's products in accordance with the New Jersey Fair Trade Act. The substantial defense interposed was plaintiff's alleged inability to sue by reason of being unlicensed as a foreign corporation. Plaintiff argued that it was not doing business in the state and that, even if held to be doing business, provisions of the Corporation Act barring suit, or applying retaliatory provisions, did not apply to it because its goods were distributed solely in interstate commerce.

"The Superior Court of New Jersey, Chancery Division, noted that plaintiff had an employee, a district manager in charge of its local marketing division, at an office in New Jersey, with a secretary and eighteen 'detailmen' on a salary basis who did work stated to be 'promotional and informational only.' It determined that plaintiff was doing business and had not complied with the provisions of the Corporation Act, even though engaged in interstate commerce. The Court, denying plaintiff's application for an interlocutory injunction, ruled that the plaintiff was barred from suing under the Corporation Act upon any contract made by it in the State, noting that the relationship between plaintiff and defendant was 'based upon a contract made in this State by virtue of the Fair Trade Act.' It thus regarded New Jersey and Indiana retaliatory statutory provisions as effective in barring the suit."

OKLAHOMA

Foreign corporation, whose airplane exploded, damaging plaintiffs, held not doing business so as to be subject to service of process where its sole activity in the state consisted in the flight of its airplane across the state.

Plaintiffs, Oklahoma farmers, alleged that defendant airplane company's bomber exploded over their premises, causing damage to their buildings and cattle. Defendant foreign corporation maintained its headquarters and factory in Kansas, and was not licensed to do business in Oklahoma. Service on defendant was attempted by service on the Secretary of State of Oklahoma, and defendant moved to quash the service, setting forth that it was not doing business in Oklahoma and thus was not amenable to service of process.

The Supreme Court of Oklahoma asserted that "the trend of the modern decision . . . to hold the foreign corporation within strict limits of accountability in local courts does not extend to render such a corporation 'present' for jurisdictional purposes by reason of the flight of its airplane across the state without the showing of additional business activities within the state."

McClarin v. Boeing Airplane Company, 340 P. 2d 455. Norman Barker, of Tulsa, for plaintiffs. Green & Feldman, W. E. Green, Raymond G. Feldman, William S. Hall, George A. Farrar, of Tulsa, for defendant.

SOUTH DAKOTA

Unlicensed foreign corporation held subject to service of process where the cause of action arose out of its activities in the state.

Defendant was an Ohio corporation, not licensed to do business in South Dakota. It had a District Manager in South Dakota who, in addition to soliciting sales for defendant company's products, consulted with and advised its distributor as to problems of assembly and installation, gave sales talks to salesmen to stimulate sales, and sponsored sales contests for defendant's products out of which contests this action arose. From a decision of the lower court quashing service on defendant, plaintiff appealed.

The Supreme Court of South Dakota, concluding that the service on defendant's District Manager was service on a Managing Agent within the purview of the statute, addressed itself to the question of whether the defendant was doing business in South Dakota so as to be subject to service of process. The Court, relying on the controlling decisions of the United States Supreme Court, and pointing out that the cause of action arose out of defendant's activities in South Dakota, held that defendant was subject to service of process in the State.

Brewster v. F. C. Russell Company, 99 N.W. 2d 42. Paul E. Mundt, of Sioux Falls, for plaintiff-appellant. Blaine Rudolph (of Bogue & Rudolph) of Canton, for defendant-respondent.

taxation

ILLINOIS

Sale of imports held not subject to Illinois Retailers' Occupation Tax where sale was consummated before articles were removed from original packages.

The issue here was whether the plaintiff could be assessed under the provisions of the Retailers' Occupation Tax Act for the sale of fifty imported printing presses. Plaintiff imported the presses from European manufacturers and sold them to its Illinois customers. The presses were shipped by ocean-carrier from European

ports to Calumet Harbor, Illinois, and the sales were consummated upon delivery of the presses to the plaintiff's customers at the Calumet Docks. The customers, at their own risk and expense, transported the presses in the original and unopened crates to their plants in Illinois.

To the Department of Revenue's contention that the fifty presses did not have an import status because they had been sold by the importer, the Illinois Supreme Court observed that the U. S. Supreme Court "has consistently held that imported articles retain their import status until they are sold, removed from the original package, or put to the use for which they are imported . . . Although the imports lose their immunity from State taxation after being sold by the importer, that sale or the gross receipts from that sale are not taxable." The decree of the Circuit Court of Cook County reversing and cancelling the assessment, was affirmed.

*Miehle Printing Press and Manufacturing Company v. Department of Revenue,** Illinois Supreme Court, January 22, 1960. Grenville Beardsley, Attorney General (William C. Wines, Raymond S. Sarnow, A. Zola Groves and Samuel A. Kanter, Assistant Attorneys General, of counsel), for appellant. Sidley, Austin, Burgess and Smith, of Chicago (William H. Avery, Middleton Miller and Emerson T. Chandler, of counsel), for appellee.

*The full text of this opinion is printed in the **State Tax Reporter**, Illinois, page 10,313.

OKLAHOMA

Unlicensed foreign corporation held subject to tax on income derived from rental of freight cars to railroads which were using them in Oklahoma in interstate commerce.

Taxpayer was a New Jersey corporation not qualified to do business in Oklahoma. It was in the business of renting refrigerated freight cars to railroads for the transportation of perishable commodities in interstate commerce, some of which cars were used by the lessee railroads in Oklahoma. It had no direct dealing with shippers, and freight charges were collected and retained by the railroads leasing the cars. The taxpayer had no office, place of business or employees or agents in Oklahoma. The only property the corporation ever had in the State was the leased cars. Rent for the cars was paid, on the basis of so much per mile, to the taxpayer's headquarters in Missouri.

The Oklahoma Supreme Court pointed out that the Oklahoma income tax is levied, among other sources, on income "derived from all property owned partly within and partly without" Oklahoma. The Court concluded that the legislature intended to levy a tax on income accruing from property having a situs in the State, and ruled that these cars did have such a situs, thus making the lessor subject to a tax on the income it derived from the leasing. The judgment of the trial court was reversed with directions to enter judgment for the Commission.

Oklahoma Tax Commission v. American Refrigerator Transit Co.,* Oklahoma Supreme Court, December 22, 1959. E. J. Armstrong, of Oklahoma City, for plaintiff in error. Henry B. Taliaferro, Jr., Claude Monnet, Monnet, Hayes, Bullis, Grubb & Thompson, of Oklahoma City, for defendant in error.

*The full text of this opinion is printed in the **State Tax Reporter**, Oklahoma, page 10,133.

PENNSYLVANIA

Unlicensed Indiana corporation, engaged exclusively in interstate commerce with respect to Pennsylvania, but with substantial local activities in connection with this commerce, held subject to the Pennsylvania Corporation Income Tax Law of 1951.

One of the defendants, an unlicensed Indiana corporation with its principal office in Indiana, was engaged in transporting property by motor vehicle, as a common carrier, exclusively in interstate commerce. Defendant owned no real property in Pennsylvania, and its tangible personal property located in the Commonwealth, i.e. 13 tractors, 3 trucks, 2 trailers and 5 service cars, was used exclusively in connection with its interstate transportation business. In addition, defendant had four substantial terminals in Pennsylvania which it leased from others, and 190 employees in the Commonwealth, all of whom were engaged in operations strictly connected with interstate commerce. Defendant's gross receipts from its interstate business in Pennsylvania exceeded two million dollars. From a 1957 decision of the lower court, holding the Pennsylvania Income Tax Law of 1951 unconstitutional as applied to defendants, an appeal was taken to the Pennsylvania Supreme Court.

In reversing the lower court, the Pennsylvania Supreme Court, relying on the 1959 United States Supreme Court opinion in *Northwestern States Portland Cement Co. v. Minnesota*, 79 S. Ct. 357, 358 U. S. 450, (The Corporation Journal, April—May 1959, pages 203 and 214; June—July 1959, page 223; December 1959—January 1960, page 283) took the position that the local activities of the defendant were sufficient to permit Pennsylvania constitutionally to levy a tax on its net income derived from Pennsylvania. In addition, the court concluded that "the formula prescribed in the Corporation Income Tax Law fairly and properly apportions to 'local activities' the net income derived from interstate commerce in which the taxpayer is engaged", the law "does not discriminate against interstate commerce," and multiple taxation was not "shown to exist". The court made its opinion applicable to both defendants in this case and judgment in each case was reversed.

In a concurring opinion, it was pointed out that Public Law 86-272, passed by the United States Congress to limit the effect of the *Northwestern* decision, "in no way restricts the imposition of the tax as provided for by Pennsylvania's Corporation Income Tax Law of 1951, and, in fact, substantiates the majority's conclusion that the tax is both constitutional and applicable to the litigants in the instant cases."

Commonwealth v. Eastern Motor Express, Inc.; Commonwealth v. Riss & Company, Inc.,* Supreme Court of Pennsylvania, Middle District, December 30, 1959.

*The full text of this opinion is printed in the **State Tax Reporter**, Pennsylvania, page 21,114.

state legislation

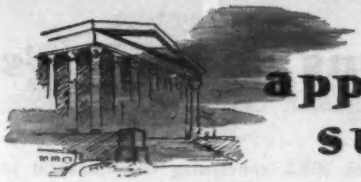
Colorado— Senate Bill No. 13, effective January 1, 1961, provides that if any taxable personal property is brought into Colorado for any purpose at any time subsequent to 12 Meridian on the assessment date (February 1st), the owner thereof is required to file a schedule, listing such property, with the county assessor who will assess the property proportionately for the remainder of the year.

Georgia— Effective as to payments of wages made on and after May 1, 1960, withholding at the source will be required as a result of the enactment of Act 435 (H. B. 602) of 1960. The new requirements apply to corporations doing business in Georgia making payments of wages to any employee, whether a resident or non-resident. The amounts to be deducted and withheld are set forth in percentage bracket tables for various payroll periods. Returns and payments will be due quarterly, the first due on or before July 31 covering the preceding calendar quarter.

Kentucky— House Bill 75 of 1960, effective on and after July 1, 1960, imposes 3% sales and use taxes on those selling tangible personal property at retail, renting and furnishing rooms, lodgings or accommodations to transients, selling certain admissions and furnishing certain services. Returns and payments will be due monthly, on or before the 20th day of each month covering the preceding month, the first return and payment due on or before August 20, 1960.

Mississippi— The maximum income tax rate applicable to corporations will be reduced on a graduated basis from 6% to 3% over a six-year period, commencing with calendar year 1961, by virtue of House Bill 24, approved February 23, 1960. The rate of tax on taxable income over $25,000, for the calendar year 1961, will be 5.5%.

South Dakota— House Bill 628 of 1959 provides that a license to do business in South Dakota will not be issued to a foreign corporation whose name is the same as or similar to the name of an existing domestic corporation or a qualified foreign corporation or a name the exclusive right to which is reserved. House Bill 627 provides that domestic and foreign corporations may now reserve a corporate name for a period of 60 days upon making application therefor to the Secretary of State and paying a filing fee of $2.



appealed to the supreme court

The following cases previously digested in The Corporation Journal have been appealed to The Supreme Court of the United States.*

CALIFORNIA. Docket No. 701. *Cosper v. Smith & Wesson Arms Co.*, 346 P. 2d 409. (The Corporation Journal, December 1959—January 1960, page 288, and April—May 1960, page 326.) Service of process—doing business. **Petition for writ of certiorari filed, February 12, 1960.**

FLORIDA. Docket No. 80. *Scripto, Incorporated v. Carson*, 105 So. 2d 755. (The Corporation Journal, December 1959—January 1960, page 294.) Interstate commerce—collection of use tax. **Appeal filed, May 27, 1959. Jurisdiction noted, October 12, 1959.** (80 S. Ct. 52) **Argued, February 24, 1960.**

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* Data compiled from **CCH U. S. Supreme Court Bulletin**.

Discussions on Corporation Law

Is The Trust Fund Theory of Capital Stock Dead?, by James F. Johnson. 34 Accounting Review, October, 1959, page 609.

Fractional Corporate Shares, by W. Lewis Roberts. 47 Kentucky Law Journal, Summer, 1959, page 507.

Collapsible Corporations and Subsection (e), by James R. Modrall. 37 Taxes—The Tax Magazine, October, 1959, page 895.

Business Associations, by Bert S. Prunty, Jr. New York University Law Review, December, 1959, page 1425.

Effect of Subchapter S on Decisions as to Form of Business Organization, by Converse Murdoch. Taxes, The Tax Magazine, January, 1960, page 19.

One Year of Subchapter S, by Max E. Meyer. Taxes, The Tax Magazine, February, 1960, page 105.

To Be or Not to Be a 1361 Corporation, by Arnold J. Olenick. Taxes, The Tax Magazine, February, 1960, page 139.

regulations and rulings

Alabama—Income Tax Regulation 398.2, concerning determination of income from multi-state operations, is to some extent in conflict with Public Law 86-272, which limits the power of the states to impose net income taxes on foreign corporations engaged exclusively in interstate commerce. The Department of Revenue will enforce the Alabama income tax law within the limitations provided by Public Law 86-272, but, in view of questions raised as to the constitutionality of this law, the State Department of Revenue does not waive any rights which might accrue in the event Public Law 86-272 is declared unconstitutional or is amended or repealed. (Commissioner of Revenue Directive No. 4, State Tax Reporter, Alabama, ¶ 200-095.)

Florida—A previously organized Florida corporation which has paid a charter tax and successive stock increase taxes at a higher rate than is now in effect is not entitled to a tax credit on a new stock increase under the present stock tax statutes. (Opinion of the Attorney General, State Tax Reporter, Florida, ¶ 200-317.)

Iowa—Funds held in an employees' pension trust fund for the benefit of employees of banks, insurance companies or of other private concerns are required to be listed for taxation by the trustee of such employees' pension fund. Since there is no specific provision which would exempt pension trust funds, such funds are taxable. Under Section 428.1, the property of a trust beneficiary must be listed by the trustee. (Opinion of the Attorney General, State Tax Reporter, Iowa, ¶ 24-066.)

Kentucky—Occupational ordinances imposing a license fee on the income of anyone doing work or performing services within a city and also upon the gross receipts or net profits of companies doing business within a city have been held valid. As to whether or not such ordinances would be applicable to a foreign corporation would be a question involving interstate commerce and no doubt would have to be tested in court where all the facts involved would be presented. (Opinion of the Attorney General, State Tax Reporter, Kentucky, ¶ 200-223.)

Ohio—All amounts treated as taxable income under the provisions of Subchapter S of the Federal Internal Revenue Code will be considered as part of the aggregate income received from the taxable investments of a taxpayer who uses the federal election. A taxpayer who uses the ordinary listing method must report as income yield only those amounts that were paid and distributed during the preceding calendar year. This interpretation, although resulting in varying tax consequences between those taxpayers who use the federal election and those taxpayers who use the ordinary listing method, is in accordance with the provisions of Ohio law as construed by the Board of Tax Appeals and the Ohio Supreme Court. (Letter from the Ohio Tax Commissioner to Commerce Clearing House, Inc., State Tax Reporter, Ohio, ¶ 201-029.)

some important matters

For April and May

This Calendar does not purport to be a *complete* calendar of all matters requiring attention by corporations in any given state. It is a condensed calendar of the more important requirements covered by the *State Report and Tax Bulletins* of The Corporation Trust Company. Attorneys interested in being furnished with timely and complete information regarding *all* state requirements in any one or more states, including information regarding forms, practices and rulings, may obtain details from any office of The Corporation Trust Company or C T Corporation System.

Alabama — Franchise Tax due April 1; delinquent after April 30.

Arizona — Income Tax and Annual Report due on or before April 15.

Arkansas — Income Tax Return due on or before May 15.

California — Quarterly Retail Sales Tax due on or before April 30.

Colorado — Income Tax Return due on or before April 15.
Annual Report and Franchise Tax due May 1.

Connecticut — Quarterly Retail Sales Tax due on or before April 30.

Delaware — Annual Franchise Tax due after April 1 and before July 1.—Domestic Corporations.
Returns of Information at the source due on or before April 30.—Domestic and Foreign Corporations making certain payments of salaries, dividends, interest or other income to residents of Delaware during 1959.
Withholding at Source Returns due April 30.—Domestic and Foreign Corporations paying compensation to Delaware employees.

District of Columbia — Franchise (Income) Tax Return due April 15.
Annual Reports of companies incorporated, reincorporated or qualified under the Business Corporation Act of 1954, due April 15.

Georgia — Income Tax Return due April 15.

Idaho — Income Tax Return due on or before April 15.

Indiana — Quarterly Gross Income Tax due on or before April 30.

Iowa — Quarterly Retail Sales Tax due on or before April 30.
Income Tax Return due on or before April 30.

Kansas — Income Tax Return due April 15.

Kentucky — Income Tax and Corporation License Tax due on or before April 15.

Louisiana — Income Tax Return and Franchise Tax Report and Tax due on or before May 15.

Maryland—Annual Report (Personal Property Return) and Franchise Tax Report and Tax due on or before April 15.—Domestic Corporations.
Income Tax Return due April 15.
Annual Report (Personal Property Return) and Filing Fee due on or before April 15.—Foreign Corporations.

Massachusetts—Returns of Information at the Source due on or before June 1.—Domestic and Foreign Corporations.

Michigan—Annual Report and Franchise Tax due on or before May 15.

Missouri—Quarterly Retail Sales Tax due on or before April 15.
Income Tax Returns due on or before April 15.

Montana—Annual Statement due in April and May.—Foreign Corporations.

New Jersey—Franchise Tax Report and payment due on or before April 15.

New Mexico—Income Tax Return due on or before April 15.
Franchise Tax due May 1.

New York—Annual Franchise (Income) Tax Return (Form 3 CT—Article 9A Tax Law) and one-half of tax due May 15—Business Corporations, Holding Companies and Investment Trusts.

North Carolina—Intangible Tax and Information Return due April 15.

North Dakota—Income Tax Return due on or before April 15.
Quarterly Retail Sales Tax due on or before April 30.

Oregon—Excise (Income) Tax Return due on or before April 15.

Pennsylvania—Capital Stock—Corporate Net Income—Loans Tax Report and Taxes due on or before April 15.—Domestic Corporations.
Franchise—Corporate Net Income—Loans Tax Report and Taxes due on or before April 15.—Foreign Corporations.
Excise Tax Report.—Foreign Corporations.

Rhode Island—Business Corporation Tax due on or before May 1.

South Dakota—Quarterly Retail Sales Tax due on or before April 15.

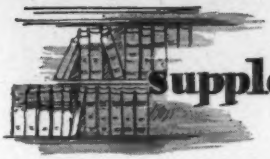
Texas—Franchise Tax due May 1.

Utah—Income (Franchise) Tax Return due on or before April 15.
Quarterly Retail Sales Tax due on or before April 30.

Vermont—Income (Franchise) Tax Return due on or before May 15.

Virginia—Income Tax Return due on or before April 15.
Income Tax due June 1.

West Virginia—License Tax Report due in April.—Foreign Corporations.
Quarterly Business and Occupation (Gross Sales) Tax due April 30.



supplementary literature

In connection with its various activities The Corporation Trust Company publishes the following supplemental pamphlets, any of which will be sent without charge to readers of The Journal. Address The Corporation Trust Company, 120 Broadway, New York 5, N. Y.

Heads I Win, Tails You Lose. An explanation of the possible consequences to the corporation which takes a chance [?] on doing business in states outside the state of its incorporation without complying with governing laws, rulings and regulations.

Spot Stocks Mean More Sales. A review of the advantages *and* dangers of using spot stocks at strategic shipping centers to bolster and increase sales.

Corporate Tightrope Walking. Of interest to counsel for and the officers of any corporation carrying on business in interstate commerce.

Agent for Process. Case histories of corporation officials who suddenly found out that trouble can take funny bounces when statutory representation is entrusted to a business employee.

Corporate Confusion. A discussion of the wriggling, twisting, seemingly opposite court decisions which make building a pattern for out-of-state operations by a corporation a risky business these days.

A Pretty Penny . . . Gone! What it can cost a corporation—as shown by actual court cases—if its agent cannot be found when service of process is attempted.

Some Contracts Have False Teeth. Interesting case-histories showing advisability of getting lawyer's advice before contracting for work outside home state, even for federal government.

FOR LAWYERS ONLY

The following C T publications are available only to members of the Bar.

What Constitutes Doing Business. A 133-page book containing texts of statutory definitions of "doing business" by a corporation . . . all-state discussions, with citations, of 49 "doing business" subjects . . . citations to service of process cases (as distinguished from cases relating to qualification), listed according to subject and classified according to whether service was sustained or set aside.

Suppose The Corporation's Charter Didn't Fit! Shows how charter provisions which suit well enough at time of organization may be handicaps for the corporation in later life — and some measures to avoid them that a lawyer may help his client to take.

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